

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 12, 2002

IN RE:

**ALL TELEPHONE COMPANIES TARIFF
FILINGS REGARDING
RECLASSIFICATION OF PAY
TELEPHONE SERVICE AS REQUIRED BY
FEDERAL COMMUNICATIONS
COMMISSION (FCC) DOCKET 96-128**

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DOCKET NO. 97-00409

FINAL ORDER

This docket came before the Tennessee Regulatory Authority ("Authority") at the May 21, 2002 Authority Conference for consideration of: 1) the *Proposed Settlement Between TPOA and United* ("Payphone Settlement") filed by United Telephone-Southeast, Inc. ("UTSE") and Tennessee Payphone Owners Association ("TPOA") on May 6, 2002 and 2) the comments regarding the need for deaveraged rates filed by TPOA and BellSouth Telecommunications, Inc. ("BellSouth") on February 16, 2001 and by UTSE on February 20, 2002.

I. RELEVANT PROCEDURAL HISTORY

Pursuant to § 276 of the Federal Telecommunications Act of 1996 ("Act"), the Federal Communications Commission ("FCC") issued a series of orders directing state commissions to enforce the FCC's newly promulgated rules. These rules required telephone companies to file

tariffs with state commissions reclassifying payphones and removing subsidies associated with payphone operations from other classes of services.¹

On February 28, 1997, BellSouth filed a tariff in Docket No. 97-00346, and on January 10, 1997, UTSE filed two tariffs in Docket Nos. 97-00345 and 97-00344. The tariffs each contained an effective date of April 1, 1997.² The TPOA filed a petition to intervene in each of the dockets on March 14, 1997.

Claiborne Telephone Co., Ooltewah/Collegedale Telephone Co., Ardmore Telephone Co., Adamsville Telephone Co., Millington Telephone Co., Peoples Telephone Co., West Tennessee Telephone Co., United Telephone Co., Crockett Telephone Co., Citizens Telecommunications Company of Tennessee LLC and Citizens Telecommunications Company of the Volunteer State LLC (collectively "Citizens"), Loretto Telephone Co., and the Telephone Data System Companies ("TDS"), which include Tennessee Telephone Co., Humphreys County Telephone Co., Concord Telephone Exchange, Inc., and Tellico Telephone Co., each filed tariffs and revised tariffs in January, February, and/or March 1997. All the tariffs contained an effective date of April 15, 1997.

The Authority considered the tariffs in Docket Nos. 97-00344, 97-00345, and 97-00346 and the TPOA's petitions to intervene at a regularly scheduled Authority Conference on March 18, 1997. Thereafter, the Authority entered an order on April 4, 1997 in Docket Nos. 97-00344 and 97-00345 and on April 7, 1997 in Docket No. 97-00346 granting the TPOA's petitions to

¹ *In re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 F.C.C.R. 20,541 (Sept. 20, 1996) (Report and Order); *In re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 F.C.C.R. 21,233 (Nov. 8, 1996) (Order on Reconsideration).

² UTSE later filed an amended tariff on May 19, 1997, with an effective date of April 15, 1997.

intervene, approving the respective tariffs pending the outcome of a contested case, and opening consolidated Docket No. 97-00409 to proceed with the contested case.³

By letter of April 9, 1997, AT&T Communications of the South Central States, Inc. ("AT&T") requested that the Authority consider its petitions to intervene filed on April 2, 1997 in Docket Nos. 97-00344, 97-00345, and 97-00346 as filed in the new, consolidated docket. The Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate") filed a *Petition to Intervene* on April 14, 1997.

At the regularly scheduled Authority Conference held on April 15, 1997, the Authority appointed Director H. Lynn Greer, Jr. as the Pre-Hearing Officer in Docket No. 97-00409. The Authority granted AT&T's and the Consumer Advocate's petitions to intervene,⁴ ordered TDS to reduce its rates and eliminate the subsidy to payphones from regulated services revenues through tariff filings, and approved the tariffs of TDS,⁵ Loretto Telephone Co., Citizens, Peoples Telephone Co., West Tennessee Telephone Co., United Telephone Co., Crockett Telephone Co., Claiborne Telephone Co., Ooltewah/Collegedale Telephone Co., Ardmore Telephone Co., Adamsville Telephone Co., and Millington Telephone Co. pending the outcome of the contested case.⁶

³ *In re: Tariff Filing by BellSouth Telecommunications to Comply with FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-067)*, Docket No. 97-00346, Order (Apr. 7, 1997); *In re: Tariff Filing by United Telephone Southeast to Comply with FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-010)*, Docket No. 97-00345, Order (Apr. 4, 1997); *In re: Tariff Filing by United Telephone Southeast to Revise General Subscribers Tariff to Comply with FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-007)*, Docket No. 97-00344, Order (Apr. 4, 1997).

⁴ On August 17, 2000, AT&T filed its *Notice of Withdrawal of Intervention*.

⁵ These tariffs added coin supervision and did not remove the subsidy.

⁶ *Order Granting Petition to Intervene of AT&T Communications of the South Central States, Inc.* (Apr. 24, 1997); *Order Granting Intervention of the Consumer Advocate, Appointing a Hearing Officer and Approving Tariffs for Reclassification of Pay Telephones* (May 2, 1997).

On April 22, 1997, MCI Telecommunications Corporation ("MCI") filed a petition to intervene. At the regularly scheduled Authority Conference held on April 29, 1997, the Authority unanimously voted to grant the petition.⁷

At a Pre-Hearing Conference held on May 29, 1997, the Consumer Advocate asserted that Docket No. 97-00409 should include BellSouth, UTSE, and Citizens and that the Authority should open a separate docket to include the remaining, smaller, independent local exchange carriers ("independent LECs"). The Pre-Hearing Officer ordered such after finding that the expense of preparing cost studies for this docket would be too great for the independent LECs. In addition, the Pre-Hearing Officer obtained the parties' agreement to a procedural schedule.⁸

On June 26, 1997, the TPOA filed *TPOA Request for Continuance*. The TPOA requested that the Pre-Hearing Officer continue the procedural schedule for approximately thirty (30) days to allow the TPOA to consult with expert witnesses and prepare for the hearing. On July 8, 1997, the Pre-Hearing Officer held a Pre-Hearing Conference to address several issues including the *TPOA Request for Continuance*. During the conference, the Pre-Hearing Officer granted the TPOA's request and scheduled a status conference for September 3, 1997 to finalize the issues list and amend the procedural schedule.⁹

On September 3, 1997, the Pre-Hearing Officer conducted the previously scheduled status conference. During the conference, the parties determined that the issues included:

⁷ Order Granting Intervention (May 12, 1997).

⁸ Preliminary Report and Recommendation of the Hearing Officer (May 29, 1997); Order Establishing a Separate Docket for the Smaller Companies (Jun. 6, 1997). The docket involving the independent LECs was assigned No. 97-01181.

⁹ Second Report and Recommendation of the Hearing Officer (July 15, 1997).

1) the calculation of subsidies to or from payphone operations; 2) the rate changes to remove any determined subsidies; and 3) an access line rate for payphones. Also during the conference, the Consumer Advocate requested a delay in the procedural schedule until after the first of 1998. The TPOA and UTSE favored the requested delay. MCI expressed no preference, and BellSouth opposed the delay. The Pre-Hearing Officer agreed to the requested delay and determined that another status conference was necessary to establish a new procedural schedule.¹⁰ At the second status conference held on September 23, 1997, the parties stated that they had not settled any of the issues and agreed to a new procedural schedule.¹¹

On March 4, 1998, the TPOA filed an *Agreed Motion for Continuance* on behalf of all the parties. The TPOA asserted that the Authority should continue the docket until it completes the Permanent Prices docket and the Universal Services docket, Docket Nos. 97-01262 and 97-00888 respectively, because both dockets involve the determination of the costs of various BellSouth services, including the costs of facilities used to serve payphones. In addition, the motion stated that the parties had agreed to the postponement because, as required by the FCC, the final rates would be applied retroactively to April 15, 1997. The Pre-Hearing Officer agreed to the motion and granted the continuance.¹²

Docket No. 97-00409 remained inactive until March 21, 2000, when the TPOA filed a letter requesting that the Pre-Hearing Officer reconvene the proceeding and set a procedural schedule. BellSouth, UTSE, and Citizens responded to the request. On July 21, 2000, the Pre-

¹⁰ *Third Report and Recommendation of the Hearing Officer* (Sept. 16, 1997). The Authority adopted the report and recommendation at the October 7, 1997 Authority Conference. *Order Adopting the Third and Fourth Report and Recommendation of Hearing Officer from the Pre-Hearing Conferences Held September 3, 1997, and September 23, 1997* (Apr. 1, 1998).

¹¹ *Fourth Report and Recommendation of the Hearing Officer* (Sept. 24, 1997). The Authority adopted the report and recommendation at the October 7, 1997 Authority Conference. *Order Adopting the Third and Fourth Report and Recommendation of Hearing Officer from the Pre-Hearing Conferences Held September 3, 1997, and September 23, 1997* (Apr. 1, 1998).

¹² *Initial Order for Extension of Time* (Mar. 27, 1998).

Hearing Officer filed an order reconvening Docket No. 97-00409 and directing the parties in Docket Nos. 97-00409 and 97-01181 to file comments on three options for proceeding with the two dockets. The three options were: combining the dockets, maintaining separate proceedings, or maintaining separate proceedings with the Docket No. 97-01181 parties intervening in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates.¹³

The parties filed comments on the three options proffered by the Pre-Hearing Officer. After considering the comments, the Pre-Hearing Officer filed an order on July 31, 2000 finding that none of the parties had provided a compelling reason to overturn the June 6, 1997 order bifurcating the dockets. The Pre-Hearing Officer reaffirmed his previous conclusion that the parties to Docket No. 97-01181 should be spared the expense associated with filing cost studies in Docket No. 97-00409.¹⁴ During the August 15, 2000 Conference, the Directors voted unanimously to approve the Pre-Hearing Officer's orders of July 21 and 31, 2000.¹⁵

BellSouth and UTSE filed their cost studies on September 15, 2000, and Citizens filed their cost studies on August 15, 2000. BellSouth, UTSE, Citizens and TPOA also filed direct testimony in support of their cost studies on September 15, 2000. On October 6, 2000, BellSouth, UTSE and TPOA filed rebuttal testimony.

At a Pre-Hearing Conference held on October 10, 2000, the Pre-Hearing Officer with the agreement of the parties determined that the Authority would decide the issues in this docket based on the pre-filed testimony, the administrative record, and oral arguments. In addition, the Pre-Hearing Officer ordered that the parties could file supplemental rebuttal testimony related to

¹³ *Order of Pre-Hearing Officer Denying Motion for Interim Relief, Requesting Comments from Parties to Docket No. 97-00409 and Setting a Procedural Schedule*, pp. 9-10 (Jul. 21, 2000).

¹⁴ *Order of Pre-Hearing Officer Continuing Separation of the Docket No. 97-01181, Granting the Tennessee Small Local Exchange Companies Coalition's Petition to Intervene in Docket No. 97-00409*, p. 3 (Jul. 31, 2000).

¹⁵ *Order Affirming Pre-Hearing Officer's Orders of July 21, 2000 and July 31, 2000* (Jan. 4, 2001).

additional discovery productions by October 20, 2000.¹⁶ Pursuant to this order, BellSouth and TPOA filed supplemental rebuttal testimony.

The Directors heard oral arguments in this matter on October 25, 2000. The parties in attendance were: BellSouth, Citizens, TPOA, UTSE, the Consumer Advocate, and TDS. During the October 25th oral arguments, TPOA orally moved for an award of prejudgment interest. Thereafter, the Directors heard from opposing parties and ultimately requested the TPOA file a written motion to ensure clarity. The TPOA complied with the Authority's request and filed its *Motion for Prejudgment Interest* on October 26, 2000 and *Memorandum of Law in Support of Motion for Prejudgment Interest* on October 31, 2000. The Consumer Advocate filed a memorandum of law in support of the motion on November 3, 2000. On this same day, BellSouth and UTSE filed responses opposing the motion. On November 13, 2000, the TPOA filed a *Motion to File a Reply Brief* with an attached brief.

The Directors considered the *Motion to File a Reply Brief* during the regularly scheduled Authority Conference on November 21, 2000. The Directors found that TPOA, as the movant, should have the final opportunity to reply to opposing arguments. Therefore, the Directors voted to overrule the objections and grant the motion.¹⁷

On December 19, 2000, the Authority deliberated the issues in this docket and memorialized their decisions in the *Interim Order* issued on February 1, 2001. The Authority found that payphone rates should include a monthly flat rate component and a usage rate component. The Authority further determined that to further study the need for deaveraged rates, the parties should file comments thereon by February 16, 2001. The Authority next

¹⁶ *Order Reflecting Rulings Rendered During October 10, 2000 Pre-Hearing Conference*, p. 4 (Oct. 10, 2000).

¹⁷ *Order Granting Motion to File Reply Brief and Overruling Objections to Authority Data Requests*, p. 3 (Jan. 4, 2001).

adopted the new services test as the appropriate test to use in calculating payphone access line rates.¹⁸ In addition, the Authority held that “any rates calculated pursuant to the new services test must comply with § 276 of the Act and state law.”¹⁹ In summary, the Authority concluded that rates shall be “1) compliant with the new services test; 2) consistent with § 276 of the Act; 3) nondiscriminatory; and 4) cost-based.”²⁰

As to the specific application of the new services test, the Authority determined that when “payphone rates are based on jurisdictionally unseparated costs, such costs must be adjusted using the seventy-five percent (75%) intrastate/twenty-five percent (25%) interstate separation factor used by the FCC to segregate non-traffic sensitive costs” and applied this finding to the cost studies filed by BellSouth and Citizens.²¹ As to the specific parties, the Authority concluded that BellSouth may assess a reasonable allocation of overhead for each of BellSouth’s payphone service products that, at a maximum, results in a rate that is one and five-tenths (1.5) times greater than direct costs. Citizens may set rates that, at a maximum, are based on the overhead allocation calculations contained in their cost studies.²²

Based on these determinations, the Authority set the maximum non-traffic sensitive rate to be charged by BellSouth for PTAS²³ at \$13.78 per month exclusive of SLC, EULC, or PICC²⁴ with a \$0.0042 charge per minute of usage. The Authority set the maximum non-traffic sensitive

¹⁸ *Interim Order*, pp. 28-29 (Feb. 1, 2001).

¹⁹ *Id.* at 16.

²⁰ *Id.* at 17.

²¹ *Id.* at 29, Exhs. 1, 2, 4 - 7.

²² *Id.* at 29.

²³ PTAS is an acronym for Pay Telephone Access Service and is sometimes referred to as a “dumb” line because the intelligence for certain payphone features, such as coin-handling, resides in the payphone set instead of the LEC’s central office switch. For SmartLine® service, this intelligence resides in the LEC’s switch. Additionally, SmartLine® and “dumb” line are terms used exclusively by BellSouth to describe their services.

²⁴ Subscriber Line Charge (“SLC”), End User Common Line Charge (“EULC”), and Primary Interexchange Carrier Charge (“PICC”) are interstate line charges.

rate to be charged by BellSouth for SmartLine[®] at \$20.94 per month exclusive of SLC, EULC, or PCCC with a \$0.0042 charge per minute of usage.²⁵

The Authority found that Citizens Telecommunications Company of Tennessee LLC may charge a maximum non-traffic sensitive rate of \$13.22 per month exclusive of SLC, EULC, or PCCC with a \$3.98 charge per month for coin supervision. Citizens Telecommunications Company of the Volunteer State LLC may charge a maximum non-traffic sensitive rate of \$17.78 per month exclusive of SLC, EULC, or PCCC with a \$3.96 charge per month for coin supervision. The Authority determined that it would be inappropriate to use the data provided by Citizens to fix usage sensitive rates for payphone service. Therefore, the Authority ordered Citizens to file a payphone-specific study identifying the average monthly minutes of use per payphone access line for each company by December 29, 2000.²⁶

As to UTSE, the Authority found that it had insufficient information to set rates for UTSE's payphone service due to deficiencies in UTSE's cost study. Therefore, the Authority ordered UTSE to file a payphone-specific cost study that is consistent with the methodology adopted for BellSouth and Citizens by February 2, 2001. In the interim, the Authority ordered UTSE to charge the flat and usage sensitive rates adopted for BellSouth.²⁷

The Authority ordered BellSouth, UTSE and Citizens to "correct their subsidy calculations once the Authority adopts permanent rates for each LEC by filing appropriate reclassification tariffs that remove any subsidies."²⁸ Lastly, the Authority ordered BellSouth, UTSE, and Citizens to fully reimburse all payphone service providers by paying to all payphone

²⁵ *Interim Order*, p. 29, Exhs. 1-3.

²⁶ *Id.* at 29-30, Exhs. 4-7.

²⁷ *Id.* at 22, 30.

²⁸ *Id.* at 24, 30.

service providers the true-up amount plus six percent (6%) interest annually since April 15, 1997.²⁹

On December 29, 2000, Citizens responded to the Authority's directive by filing usage data for Citizens Telecommunications Company of Tennessee LLC. On January 8, 2001, Citizens filed additional usage data for Citizens Telecommunications Company of the Volunteer State LLC and a letter explaining that Citizens Telecommunications Company of the Volunteer State LLC does not have measured service available in its territory.

On January 12, 2001, UTSE filed *UTSE Motion for Extension of Time* requesting an extension until March 6, 2001 to file a compliant cost study. Finding that good cause existed for the requested extension, the Authority granted UTSE's motion and ordered UTSE to file its payphone-specific cost study no later than Tuesday, March 6, 2001.³⁰

As directed in the *Interim Order*, BellSouth, TPOA and UTSE filed on February 16, 2001 comments on the need for deaveraged payphone rates in Tennessee.

At a regularly scheduled Authority Conference on February 21, 2001, the Authority deliberated the issues related to Citizens' filings. Based on Citizens' cost studies, responses to the December 19th directive, and the record as a whole, the Authority found that the application of the new services test methodology to the data provided by Citizens Telecommunications Company of Tennessee LLC resulted in a per minute, payphone usage rate of \$0.00175.³¹ The Authority further found that Citizens Telecommunications Company of the Volunteer State LLC does not have the technical capability to provide business measured service; therefore, the Authority did not set a per minute, payphone usage rate. Instead, the Authority established a

²⁹ *Id.* at 28, 30.

³⁰ *Order Approving Tariff No. 01-00003 Filed on December 29, 2000 as Revised on January 11, 2001, Approving Tariff No. 01-00004 Filed on January 2, 2001, and Granting Motion for Extension*, p. 4 (Feb. 23, 2001).

³¹ *Second Interim Order*, p. 2, Exh. 1 (Mar. 2, 2001).

single, monthly flat rate of \$ 20.54 using the new services test. This rate recovers the costs of the non-traffic sensitive portion of the payphone access line as well as associated usage and replaces the monthly, non-traffic sensitive rate adopted in the *Interim Order*.³²

On March 6, 2001, UTSE filed its revised payphone cost study. On April 19, 2001, the Authority issued a data request asking UTSE to “re-compute the cost of payphone loops and services utilizing rate of return inputs that are consistent with those determined appropriate for the Universal Service cost study.”³³ On May 1, 2001, UTSE filed a second revised cost study in response to the Authority’s data request.

TPOA filed its comments to the second revised cost study on May 11, 2001. In its comments, TPOA noted significant differences in the payphone line rates proposed by UTSE and the rates approved for BellSouth and Citizens. Because of the disparity, TPOA contended that the Authority should conduct a thorough review of UTSE’s cost study before setting UTSE’s rates.

These filings came before the Authority at the regularly scheduled May 15, 2001 Authority Conference. Based upon a review of UTSE’s revised cost study and TPOA’s comments, the Authority found that good cause existed for further review of UTSE’s methodology. Accordingly, the Directors voted to remand this docket to the Pre-Hearing Officer for the purpose of setting a schedule for further discovery. The Authority also voted to await the completion of discovery before determining whether to convene further hearings in this docket.³⁴

³² *Id.* at 2, Exh. 2.

³³ Authority Data Request to UTSE (Apr. 19, 2001).

³⁴ *Order Remanding Docket to Pre-Hearing Officer*, pp. 2-3 (Jun. 8, 2001).

The Pre-Hearing Officer set a discovery schedule by order entered on June 11, 2001.³⁵ Thereafter, the parties engaged in discovery by filing interrogatories, objections, and motions. In response to certain discovery disputes, the Pre-Hearing Officer found:

[T]he filing of the cost study described by [UTSE] in its Response to Order may aid the Authority in its efforts to set payphone rates pursuant to the New Services test. For this reason the Pre-Hearing Officer concludes that [UTSE] should be permitted to file the cost study. As a corollary, TPOA should be afforded an opportunity to review the newly-filed cost study and to submit additional discovery requests relevant thereto if it so chooses.³⁶

UTSE filed the requested cost study on October 10, 2001. Thereafter, discovery ensued with the parties filing interrogatories, responses thereto, and motions. Finally, on May 6, 2002, TPOA and UTSE filed the Payphone Settlement. In support of the Payphone Settlement, the parties also filed cost data and exhibits demonstrating the calculation of the agreed-upon payphone rates as well as UTSE's proposed payphone tariff.

The provisions of the Payphone Settlement include the following agreements. The parties agreed to a monthly non-traffic sensitive rate of \$26.39 per payphone access line and a traffic sensitive rate of \$0.0037 per minute of use. Optional call screening features are provided at no additional cost; however, service order and installation charges will apply if such features are requested subsequent to installation of the associated payphone access line. The Payphone Settlement recites the parties' agreement "that the proposed payphone line and [usage] rates are cost-based, non-discriminatory, consistent with Section 276 of the Federal Telecommunications Act and consistent with the 'new services' test, as described in the rules and orders of the Federal Communications Commission."³⁷ The parties further "represent that the [payphone] line and usage rates have been calculated using the same formula crafted by the Authority in setting

³⁵ *Order Setting Discovery Schedule* (Jun. 11, 2001).

³⁶ *Order on Discovery Disputes*, p. 3 (Oct. 9, 2001).

³⁷ *Payphone Settlement*, p. 1 (May 6, 2002).

payphone rates for BellSouth.”³⁸ The parties also agreed to provide reimbursement consisting of the true-up amount with interest from the time the Payphone Settlement rates become effective back to the date on which the payphone service provider established service but, in no event, before April 15, 1997. The interim payphone rates that the Authority set for UTSE in December 2000 will be taken into account in the true-up process.

At a regularly scheduled Authority Conference on May 21, 2002, the Authority addressed the only remaining issues in this docket, that is, setting UTSE’s rates and determining whether deaveraged rates are needed in Tennessee. Based on the Payphone Settlement, the comments on deaveraged rates, and previous Authority orders, the Directors made the following findings and conclusions.

II. THE PAYPHONE SETTLEMENT

The primary issue under consideration is whether the agreed-upon rates set forth in the Payphone Settlement are consistent with the rate-setting standards previously established by the Authority. The Authority’s *Interim Order* describes the appropriate standard of review, the new services test, as follows:

In its payphone service orders, the FCC has indicated that states must use the “new services test” when establishing intrastate payphone rates pursuant to § 276 of the [Federal Telecommunications Act of 1996]. The new services test creates a price floor equal to the direct or economic cost of providing a service, including a reasonable rate of return. Additionally, the new services test creates a price ceiling equal to the direct cost plus a reasonable allocation of overhead costs. Thus, the new services test produces a rate that is restricted to a reasonable range of prices. The new services test does not mandate the use of any particular costing methodology; however, once a LEC selects a particular method for computing costs, it must consistently apply that same methodology in arriving at the direct costs for all related services.

Additionally, any rates calculated pursuant to the new services test must comply with § 276 of the Act and state law. Section 276 of the Act prohibits payphone rates from including subsidies to or from other telecommunications services and creating preferences to a LEC’s payphone operation. As for state

³⁸ *Id.*

law, the LECs in this docket are price-regulated companies whose rates must comply with applicable statutes, including Tenn. Code Ann. §§ 65-5-208 and 65-5-209. Furthermore, the payphone rates set in this proceeding must be consistent with the state's general telecommunications policy established in Tenn. Code Ann. § 65-4-123. Lastly, the rates established in this docket must be cost-based and non-discriminatory, which is consistent with the mandates of § 276 and Tenn. Code Ann. § 65-5-208(c) listed above.

Based on the foregoing, the Directors voted unanimously to set rates that are 1) compliant with the new services test; 2) consistent with § 276 of the Act; 3) nondiscriminatory; and 4) cost-based.³⁹

As was the case for BellSouth and the Citizens companies, direct costs are the starting point of the analysis of UTSE's proposed payphone rates. UTSE and TPOA have agreed upon the inputs used to produce direct costs and have filed supporting calculations demonstrating the computation of payphone direct costs based on a TSLRIC methodology.⁴⁰ Although the payphone direct costs for UTSE are higher than the direct costs for BellSouth and the Citizens companies, the costs are reasonable. Because telephone companies have different cost characteristics, one would expect that the direct costs of services for some companies would be higher than for other companies.⁴¹ Therefore, the Authority concludes that the payphone direct costs proposed in the Payphone Settlement are based on a reasonable costing methodology that has produced reasonable direct cost outputs that adhere to the new services test.

Additionally, in order to avoid the potential double recovery of costs, the Authority determined in the *Interim Order* that direct costs based on unseparated cost inputs should be multiplied by the traditionally-accepted seventy-five (75%) intrastate cost separations factor in order to account for the SLC revenue that the LECs collect from payphone service providers for

³⁹ *Interim Order*, pp. 16-17 (February 1, 2001) (footnotes omitted).

⁴⁰ TSLRIC is an acronym for Total Services Long Run Incremental Cost and is costing methodology. The payphone direct costs of BellSouth and Citizens were computed using a TSLRIC methodology and, as in this case, the parties did not contest the validity of the direct costs.

⁴¹ The record in this docket reveals that the direct costs of Citizens Telecommunications Company of the Volunteer State L.L.C. are higher than the direct costs of Citizens Telecommunications Company of Tennessee L.L.C., both of which are higher than the direct costs of BellSouth.

recovery of costs attributable to the interstate jurisdiction.⁴² Accordingly, in the Payphone Settlement, the parties multiplied the payphone direct costs produced by the TSLRIC cost model by seventy-five percent (75%) in order to remove the direct costs that are attributable to the interstate jurisdiction. This approach is consistent with that ordered for BellSouth and Citizens. The Authority concludes that the separations calculations made by the parties in arriving at the rates proposed in the Payphone Settlement reasonably address the potential double recovery of costs by UTSE absent the separation of costs and, moreover, that the separations calculations have produced results that are consistent with the new services test.

As for the assignment of overhead costs to payphone services, the Authority found that an overhead loading factor of one and one-half (1.5) times direct costs is appropriate when overhead costs are not specifically assigned. Because the parties did not specifically assign overhead costs to payphone services, they utilized the one and one-half (1.5) times direct costs overhead loading factor in order to account for overhead in the calculation of the payphone service rates proposed in the Payphone Settlement. The Authority concludes that this allocation of overhead costs to payphone services is consistent with the previous findings of the Authority and that such allocation has produced reasonable overhead loadings that accord with the new services test.

The rates produced by the new services test are cost-based rates, which satisfy the price floor requirement found in Tenn. Code Ann. § 65-5-208(c). Relative to the payphone services market, the uniform application of cost-based rates are nondiscriminatory and foster the pro-

⁴² *Interim Order*, pp. 17-18 (February 1, 2001). The FCC solves the double-recovery issue by requiring Bell Operating Companies, including BellSouth, to subtract SLC revenues from payphone service rates that are based on combined costs. See *In the Matter of Wisconsin Public Service Commission*, 17 F.C.C.R. 20,512, para. 61 (Jan. 31, 2002) (Order Directing Filings).

competitive goals and policies outlined in § 276 of the Act as well as Tenn. Code Ann. §§ 65-4-123, 65-5-208, and 65-5-209.

Based on the Payphone Settlement and accompanying cost support, the Directors voted that the payphone rates proposed by UTSE and TPOA are consistent with the rate-setting procedures established by the Authority in this proceeding. Therefore, the Directors voted to approve the proposed Payphone Settlement between UTSE and TPOA and to direct UTSE to file a compliant tariff by Tuesday, May 28, 2002.

III. DEAVERAGED RATES

The parties filing comments on the deaveraging issue unanimously conclude that payphone access line rates should not be deaveraged. BellSouth states that averaged rates would promote the widespread deployment of payphone services to the benefit of the general public and that deaveraged rates would only serve to frustrate the goals of § 276 of the Act.⁴³ UTSE states that while current payphone tariffs show that line rates are deaveraged by exchange, these tariffs have an inexact relationship to costs.⁴⁴ UTSE further states that the new services test does not require rate deaveraging, that there is no compelling reason to deaverage payphone rates in Tennessee, and that payphone line rates should be based on a company-wide average.⁴⁵ The TPOA states that it “agrees with the comments expressed in the TRA’s [Interim] Order of February 1, 2001, that average rates will promote the widespread availability of payphones in rural areas, consistent with the goals of state and federal law.”⁴⁶

⁴³ *BellSouth Telecommunications, Inc.’s Comments on Deaveraging*, pp. 1-2 (Feb. 16, 2001).

⁴⁴ *Comments of United Telephone-Southeast Concerning the Deaveraging of Payphone Line Service Rates*, pp. 1-2 (Feb. 16, 2001).

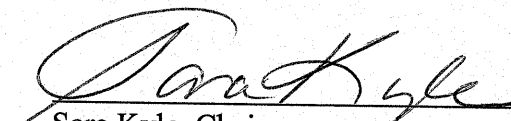
⁴⁵ *Id.*

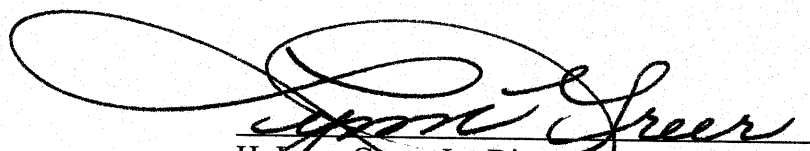
⁴⁶ Letter of TPOA (Feb. 16, 2002).

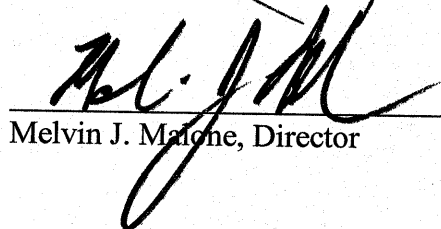
The Authority agrees with the comments of the parties. Average, company-wide payphone rates are consistent with the goal of widespread deployment of payphones in Tennessee. High-cost regions are less likely to be served by payphone service providers because higher costs cast greater doubt on profitability. Deaveraged payphone rates would only intensify a payphone service provider's reluctance to serve these regions. Moreover, average, company-wide payphone rates adequately compensate the LECs for the payphone services that they provide to payphone service providers in Tennessee. Finally, there is no evidentiary record developed in this proceeding that would support a deaveraging methodology. Based on the foregoing, the Directors found that the payphone rates established in this proceeding should be average, company-wide rates; therefore, deaveraged payphone rates will not be fixed at this time.

IT IS THEREFORE ORDERED THAT:

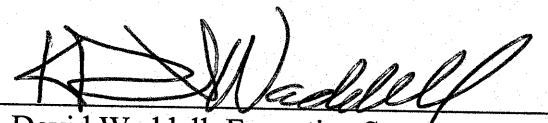
1. The *Proposed Settlement Between TPOA and United* filed by United Telephone-Southeast, Inc. and Tennessee Payphone Owners Association on May 6, 2002 is approved.
2. United shall file a compliant tariff by Tuesday, May 28, 2002.⁴⁷
3. Deaveraged payphone rates will not be fixed at this time.
4. Any party aggrieved by the decision of the Tennessee Regulatory Authority may file a Petition for Reconsideration with the Tennessee Regulatory Authority within fifteen (15) days of the entry of this Order.
5. Any party aggrieved by the decision of the Tennessee Regulatory Authority may file a Petition for Review with the Tennessee Court of Appeals, Middle Division, within sixty (60) days of the entry of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

⁴⁷ UTSE filed its tariff on May 24, 2002. The tariff was assigned number 02-00633.